



Maine Human Rights Commission

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John P. Gause
COMMISSION COUNSEL
ACTING EXECUTIVE DIRECTOR

COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

October 31, 2011

Commissioner Vestal called the October 31st, 2011 Commission meeting to order at 8:31 a.m. Present were Commissioners: Paul Vestal, Sallie Chandler, A. Mavourneen Thompson, Deborah Whitworth and Arnold Clark.

Commissioner Vestal called for adoption of the agenda.

- Acting Executive Director John P. Gause requested that case E11-0001: Rene Ted Laguerre v. Hearst Communications Inc. be tabled to the December 12th Commission Meeting at the request of the Respondent.
- Acting Executive Director John P. Gause requested that case E10-0585: Robert Kelly v. Mercy Hospital be removed from the agenda due to settlement.
- Acting Executive Director John P. Gause requested that case PA10-0413: Sharon Seile & o/b/o minor child v. Wal-Mart Store be removed from the agenda due to settlement.
- Acting Executive Director John P. Gause requested that case E11-0169: John MacMillan (Buxton v. AAA Northern New England (Portland)) be moved to from the Consent Agenda to fourth on the afternoon list of cases.
- Acting Executive Director John P. Gause requested that case E10:0459: John Malick v. Dragon Products, LLC be moved to first case to be heard on the morning agenda due to scheduling conflict.

Commissioner Chandler moved, seconded by Commissioner Thompson to adopt the agenda as amended. 5 in favor | 0 opposed.

CONSENT AGENDA (see detailed listing on page 7)

Commissioner Chandler moved, seconded by Commissioner Thompson, to accept the Investigator's recommendations in each of the cases on the Consent Agenda. 5 in favor | 0 opposed.

MINUTES:

Commissioner Chandler moved, seconded by Commissioner Thompson to adopt the September 19th Commission Meeting Minutes. 3 in favor | 0 opposed.

QUARTERLY PROGRAM REVIEW:

- Inventory Status Report & Resolutions: There were 774 open cases at the end of September 2011. The Commission closed 201 cases during the preceding quarter; 39 of those cases were closed providing some benefit to Complainants. The monetary amount recovered for Complainants during that time period was \$688,710.
- Training/Education: Commissioners reviewed the second quarter report and it was placed on file.
- Litigation - Commissioners agreed to move this item to another part of the agenda when the Commission could go into Executive Session.
- Financial: Commissioners reviewed the quarterly financial report and it was placed in the file.

ADMINISTRATION:

Personnel Report: Acting Executive Director John P. Gause reviewed the report dated October 24, 2011 noting no significant staff changes, and welcomed newly appointed Commissioners, Deborah Whitworth and Arnold Clark.

COMPLIANCE:

Compliance Report: Commissioners reviewed the compliance report and it was placed on file.

Commissioner Chandler moved, seconded by Commissioner Thompson to accept the Conciliation Agreement in E10-0109: Kathy M. Benner v. Newcastle Public House as the case has been resolved by the parties, and to dismiss the proceedings. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Thompson to accept the Conciliation Agreement in PA10-0316: David Brown v. Town of Oxford (Police Department) as the case has been resolved by the parties, and to dismiss the proceedings. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Thompson to accept the Conciliation Agreement in PA09-0316: Burch v. Denny's as the case has been resolved by the parties. 5 in favor | 0 opposed.

INVESTIGATION:

- New Charges: Commission staff opened 50 new cases in September.
- Administrative Dismissals: Commission staff dismissed 69 cases in September..
- Pre-determination Settlements: During the month February, staff were responsible for obtaining settlements in 18 cases resulting in total monetary relief in excess of \$ 310,160 for complainants.

LITIGATION: Moved to Executive Session.

NEW BUSINESS:

At 8:41 AM Chair Vestal called for a 5 minute recess.

CASES VOTED ON:

E10-0459: John Malick (Biddeford) v. Dragon Products LLC (Portland): Attorney Jeffrey Neil Young restated the position of the Complainant. Attorney Ann Cunningham restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Thompson to find **reasonable grounds** to believe that the Respondent, Dragon Products, LLC, unlawfully elicited or attempted to elicit information directly or indirectly pertaining to age on its job applications. 5 in favor | 0 opposed. Commissioner Chandler moved, seconded by Commissioner Thompson, to find no reasonable grounds to believe that the Complainant, John P. Malick, Jr., was subject to unlawful (age) discrimination in employment when he was not hired by the Respondent. 5 in favor | 0 opposed.

E09-0565: Jean Ellis (Biddeford) v. Spring Harbor Hospital (Westbrook): Attorney Tim O'Brien restated the position of the Complainant. Attorney Katharine Rand restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Vestal abstained. Commissioner Chandler abstained. Commissioner Deborah Whitworth moved, seconded by Commissioner Clark, to find no reasonable grounds to believe that the Respondent, Spring Harbor Hospital, is liable for sexual harassment of Complainant, Jean Ellis. 3 in favor | 0 opposed | 2 abstained (Vestal & Chandler). Commissioner Clark moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that the Respondent, Spring Harbor Hospital, retaliated against Complainant, Jean Ellis, for complaining of sexual harassment or because of Whistleblower retaliation. 2 in favor | 1 opposed (Thompson opposed) | 2 abstained (Vestal & Chandler abstained).

E09-0596: Jody Leathers (Winslow) v/ Northeast Laboratory Services, Inc. (Waterville): Brian Ward restated the position of the Respondent. Julia Pitney restated the position of the Complainant. Investigator Domini Pham restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Thompson, to find **reasonable grounds** to believe that the Respondent, Northeast Laboratory Services, did not engage in the interactive process with Complainant, Jody A. Leathers, and subjected her to a job transfer and finally terminated her because of her physical and mental disabilities. 5 in favor | 0 opposed.

E10-0002: Lori Levesque (Fort Kent) v. Allies, Inc. (Bangor): Attorney Ed Gould restated the position of the Respondent. Attorney Lisa Chase restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that the Respondent, Allies Inc., engaged in unlawful employment discrimination by retaliating against the Complainant because of her prior whistleblowing activity 5 in favor | 0 opposed.

E10-0138: Sylvia Healy (Ogunquit) v/ St. Andre Health Care Facility (Biddeford): Sylvia Healy restated the position of the Complainant. Attorney Bob Kline restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the Respondent, St. Andre Health Case Facility, discriminated against Complainant, Sylvia Healy, because of Whistleblower retaliation. 5 in favor | 0 opposed.

E10-0153: Sherrie Demmons (Warren) v. Correctional Medical Services, Inc. (St. Louis, Mo.): Jim Strong restated the position of the Complainant. Matt Bahl restated the position of the Respondent. Investigator Angela Tizon restated the facts of the case. Commissioner Thompson moved to find **reasonable grounds** to believe that Correctional Medical Services Inc., discriminated against Sherrie Demmons on the basis of disability by terminating her. The motion was not seconded, motion failed. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Correctional Medical Services Inc.,

discriminated against Sherrie Demmons on the basis of disability by terminating her. 4 in favor | 1 opposed. (Thompson opposed).

At 11:08 a.m. Commissioner Vestal called for a 5 minute break.

E10-0160: David Crosby (Gorham) v. F.W. Webb Company (South Portland). Attorney Gary Feldman restated the position of the Respondent. Attorney Allie McCormack restated the position of the Complainant. Commissioner Thompson moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that F.W.Webb Company discriminated against David Crosby on the basis of disability by terminating his employment. 4 in favor | 1 opposed (Vestal opposed). Commissioner Chandler moved, seconded by Commissioner Clark, to find no reasonable grounds to believe that F.W. Webb Company retaliated against David Crosby by terminating him in violation of the Whistleblowers Protection Act. 5 in favor | 0 opposed.

E10-0215: Holly Potter (Ludlow) v. Smith & Wesson (Houlton): Holly Potter restated the position of the Complainant. Attorney Katherine Rigg restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, that there are **no reasonable grounds** to believe that the Complainant, Holly Potter, was subjected to retaliation by the Respondent, Smith & Wesson, as a result of the Complainant's whistleblowing in making reports about sexual harassment and/or filing a charge with the Maine Human Rights Commission. 5 in favor | 0 opposed.

E11-0065: Gary McCarty (Old Town) v. Pine State Trading Company (Augusta): Complainant not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to believe that the Respondent, Pine State Trading Co., failed to provide reasonable accommodation to, or discharged Complainant, Gary A. McCarty, II., from employment because of physical disability. 5 in favor | 0 opposed.

At approximately 12:00 p.m. Commissioner Vestal called for a lunch break.

At approximately 12:15 p.m. Commissioner Chandler moved, pursuant to 1 M.R.S.A. §405(6)(A), to go into executive session to discuss the appointment of the Commission's Executive Director. The motion was seconded. 5 in favor | 0 opposed.

At approximately 12:50 p.m. Commissioner Chandler moved to come out of executive session. The motion was seconded. 5 in favor | 0 opposed.

E10-0253: Daniel Harnden (Strong) v. On The Edge Chipping (Phillips). Attorney David Sanders restated the position of the Respondent. Attorney Chad Hanson restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that the Respondent, On the Edge Chipping, unlawfully retaliated against the Complainant, Daniel E. Harnden due to protected whistleblower activity. 5 in favor | 0 opposed.

E10-0266: Barry Harriman (Bangor) v. The Lane Construction Corporation (Bangor) : Attorney Marshall Tinkle restated the position of the Complainant. Attorney Frank McGuire restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable ground to believe that the Complainant, Barry Harriman, was subjected to retaliation (terminated) by the Respondent, Lane Construction Corp., as a result of the Complainant's alleged whistleblower activity. 5 in favor | 0 opposed.

E11-0049: Maureen LeClair (Albion) v. OneSteel Recycling (Oakland): Attorney Charlie Einsiedler restated the position of the Respondent. Maureen LeClair restated the position of the Complainant. Legal Intern George

Dyer restated the facts of the case. Commissioner Clark moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that the Respondent, Onesteel Recycling, Inc., terminated Complainant, Maureen LeClair, because of her age and sex. 4 in favor | 1 opposed. (Whitworth opposed).

E11-0169: John MacMillan (Buxton) v. AAA Northern New England (Portland): John MacMillan restated the position of the Complainant. Attorney Ann Cunningham restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that the Respondent, AAA, discriminated against Complainant, John Macmillian, on the basis of age or that he was retaliated against for filing a charge with the EEOC. 4 in favor | 0 opposed | 1 abstained (Clark abstained).

E11-0110: Vickie Palmacci (Bangor) v. Watch Me Shine Developmental Preschool, Inc. (Ellsworth). Vickie Palmacci restated the position of the Complainant. Respondent was not present. Investigator Domini Pham restated the facts of the case. Commissioner Clark moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the Respondent, Watch Me Shine Developmental Preschool, Inc., retaliated against Complainant, Vickie I. Palmacci, in violation of the Maine Whistleblowers Protection Act by terminating her. 5 in favor | 0 opposed.

E11-0112: Leo Sousa (Lisbon Falls) v/ Restwend LLC d/b/a Wendy's (Augusta): Leo Sousa restated the position of the Complainant. Respondent was not present. Investigator Michele Dion restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the Respondent, Restwend LLC, discriminated against Complainant, Leo Sousa, on the basis of sexual orientation. 5 in favor | 0 opposed.

At 3:10 p.m. Chair Vestal called for a 5 minute break.

H11-0340: Theresa Currie (Bath) v. Erika Benson (Bath)/ Philip & Carol Helgerson (Arlington, VA): Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that the Respondents, Erika Benson, Phillip A. Helgerson or Carol Helgerson, discriminated against Complainant, Theresa Currie, in housing on the basis of receipt of public assistance. 5 in favor | 0 opposed.

E11-0126: Lloyd Kelly (Millinocket) v. Katahdin Paper Company LLC (East Millinocket): Lloyd Kelly restated the position of the Complainant. Attorney Mason Pratt Jr. Restated the position of the Respondent. Investigator Domini Pham restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the Respondent, Katahdin Paper Company, discriminated against Complainant, Lloyd Kelly, because of physical disabilities. 5 in favor | 0 opposed.

E11-0205: Shirley Kelderhouse (Dover Foxcroft) v. YMCA (Dover Foxcroft): Attorney Robin March restated the position of the Respondent. Shirley Kelderhouse restated the position of the Complainant. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Whitworth to rescind the Investigator's Report and reopen the case for further investigation. 4 in favor | 0 opposed. 1 abstained (Clark abstained).

EXECUTIVE SESSION:

Commissioner Chandler moved, seconded by Commissioner Thompson, to move into executive session at 3:35 p.m. to discuss litigation with Commission Counsel pursuant 1 M.R.S.A. §405(6)(E). 5 in favor | 0 opposed.

Commissioner Thompson moved, seconded by Commissioner Chandler, to move out of executive session at 4:05 p.m. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Whitworth, that the Commission **should not file** a complaint in E09-0468: Mark McCue v. Telpower, Inc. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Whitworth, that the Commission **should not** a complaint in E10-0397: Jennifer Demers v. Cloutier Direct, Inc. & Scott Provencher. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Whitworth, that the Commission **should not** a complaint in E10-0500: Thomas A. Caruso v. Penske Truck Leasing Co., LP. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Clark, that the Commission **should not** a complaint in E10-0043: Daimon Clark v. Kenway Corporation, Ian Copp, Michael Hall, Charles Norton, Paula Gavelle. 4 in favor | 0 opposed. 1 abstain (Thompson abstain).

Commissioner Chandler moved, seconded by Commissioner Clark, that the Commission **should not file** a complaint in PA11-0060, Ryishisa D. Morris v. Piercing Pagoda. 5 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Whitworth, that the Commission **should file** a complaint in H11-0423, Esther McLaughlin v. Middle Street Properties. 5 in favor | 0 opposed.

At 4:15 p.m. Commissioner Chandler moved, seconded by Commissioner Thompson, pursuant to 1 M.R.S.A. §405(6)(A), to move into executive session to discuss the appointment of the Commission's Executive Director. 5 in favor | 0 opposed.

At approximately 4:45 p.m. the Commission moved to come out of executive session. 5 in favor | 0 opposed.

ADJOURN:

There being no further business to come before the Commission, the meeting was adjourned at 4:45 p.m.

CONSENT AGENDA

The consent agenda is a listing of cases scheduled on the Commission's meeting agenda in which there is no written disagreement to the Investigator's recommendation. Commissioners consider these cases without oral argument by the parties.

PA09-0604: Robert Allen o/b/o minor child (Calais) v. Calais (City of) (Calais)	NRG
PA09-0605: Robert Allen o/b/o minor child (Calais) v. Wal-Mart Stores East, LP (Bentonville, AZ)	NRG
E09-0618: John Dana (Lewiston) v. Center for Behavioral Health, Me, Inc. d/b/a Discovery House (South Portland)	RG/NRG
E09-0619: Colleen Taylor (New Gloucester) v. Center for Behavioral Health, Me, Inc. d/b/a Discovery House (South Portland)	RG/NRG
E10-0051: Debra Swasey (S. Portland) v. American Personnel (Rye, NH)	NRG
E10-0052: Debra Swasey (S. Portland) v. Digital Media Displays (Seabrook, NH)	NRG
E10-0085: Sally Spencer (Bucksport) v. A Loving Touch, Inc. (Bangor)	NRG
E10-0086: Frederick Bush (Portland) v. WellPoint, Inc. (Indianapolis, In.)	NRG
E10-0189: Jerry Durgin (Dover-Foxcroft) v. Bonsey Brothers, Inc. (Dover-Foxcroft)	NRG
E10-0346: Donald Adams (Rochester N.H.) v. Adidas America, Inc. (Portland Or.)	NRG
E10-0483 & 0567: George Small (Robbinston) v. The Lane Construction Corporation (Bangor)	NRG
E10-0519: Davis Genest (Winslow) v. S.D. Warren Company d/b/a Sappi Fine Paper North America Skowhegan)	NRG
E10-0522: Zouhair Bouzrara (Portland) v. Bill Dodge Auto Group, Inc. (Westbrook)	NRG
E10-0552: Cory Fernandez (Key West, Fl) v. RT New England Franchise LLC d/b/a Ruby Tuesday Restaurant (Topsham)	NRG
E10-0577: Christina DeBold (Berwick) v. Waban Projects, Inc. (Sanford)	NRG
E11-0106: Lynn Wonch (Greene) v. Saylor Enterprises, Inc. d/b/a Miracle-Ear (Stowe, Vt)	NRG
E11-0207: Octavia Sirois (Dresden) v. Five County Credit Union (Bath)	NRG
H11-0448: Lynne Moholland (Caribou) v. Richard Harris Harris Apartments (Caribou)	RG
H11-0453: Paula Michaud (Auburn) v. Jerome Dostie (Auburn)	NRG